

APPEAL NO. 010390

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 19, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that he did not have disability. In his appeal, the claimant contends that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. Section 410.165(a) provides that the hearing officer is the sole judge of the weight and credibility of the evidence. There was conflicting evidence on the issue of whether or not the claimant injured his back at work when he tripped over the base of a basketball goal and fell. The hearing officer was acting within his province as the fact finder in determining that the claimant did not sustain his burden of proving that he sustained a compensable injury. As the fact finder, the hearing officer was free to reject the claimant's testimony as to how the accident occurred and the causation evidence from the claimant's treating doctor. In his discussion, the hearing officer specifically noted that the claimant was "neither credible nor persuasive." Our review of the record does not demonstrate that the hearing officer's determination that the claimant did not sustain a compensable injury is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Therefore, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Philip F. O'Neill
Appeals Judge